

BRUCE NAYLOR
BILL BARNEY
DARRELL TAYLOR

IBLA 83-490

Decided July 18, 1983

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. A MC 82113 through A MC 82152.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assess-Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary

with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

3. Administrative Procedure: Adjudication -- Evidence: Generally -- Evidence: Presumptions --Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it, and that he, in fact, did so, in enacting the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), Congress specifically placed the burden on the claimant to show, by his compliance with the Act's requirements, that the claim has not been abandoned and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

APPEARANCES: Wilford R. Richardson, Esq., Safford, Arizona for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Bruce Naylor, Bill Barney, and Darrell Taylor appeal the decision of the Arizona State Office, Bureau of Land Management (BLM), dated March 1, 1983, which declared the unpatented Big Wheel #1 through #40 lode mining claims, A MC 82113 through A MC 82152, abandoned and void for failure to file on or before December 30, 1981, evidence of annual assessment work or a notice of intention to hold the claims, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

Appellants state that they have held the claims for many years and have done the required assessment work each year. The 1981 proof of labor was not filed through an oversight of their legal counsel. They assert they have not abandoned the claims, and have no intention of so doing. Appellants admit the 1981 proof of labor was not actually mailed. They cite an Arizona Supreme Court case, Public Service Co. of Oklahoma v. Bleak, 656 P.2d 600 (Ariz. Sup. Ct. 1982), which held that failure to perform annual assessment work does not in and of itself work a forfeiture of the locator's right in unpatented mining claims.

[1] Under section 314(a) of FLPMA, the owner of a mining claim located on or before October 21, 1976, must file notice of intention to hold the claim or evidence of the performance of annual assessment work on the claim in the county where the notice of location is recorded and in the proper office of BLM on or before December 30 of each calendar year following the date of first recording proof of labor or notice of intention to hold the claims. This requirement is mandatory, not discretionary, and failure to comply is conclusively deemed to constitute abandonment of the claim by the owner, and renders the claim void. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980).

[2, 3] The Board responded to arguments similar to those presented here in Lynn Keith, *supra*. With respect to the conclusive presumption of abandonment and appellant's arguments that the intent not to abandon was manifest, we stated:

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative, and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

* * * Appellant also argues that the intention not to abandon these claims was apparent * * *. At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. Farrell v. Lockhart, 210 U.S. 142 (1908); 1 Am Jur. 2d, Abandoned Property §§ 13, 16 (1962). Almost any evidence tending to show to the contrary would be admissible. Here, however, in enacted legislation, the Congress has specifically placed the burden on the claimant to show that the claim has not been abandoned by complying with the requirements of the Act, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon may not be considered. [Emphasis in original.]

53 IBLA at 196-97, 88 I.D. at 371-72.

Filing is accomplished only when a document is delivered to and received by the proper BLM office. The filing requirement is imposed by statute, and this Board has no authority to waive it. See Lynn Keith, *supra*. Responsibility for complying with the recordation requirements of FLPMA rested with the appellants or their agent. As no proof of labor was filed in 1981 with BLM, BLM had no choice but to declare the claims abandoned and void pursuant to FLPMA.

Appellants may wish to consult with BLM about the possibility of relocating these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

